

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

144
BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 14,263

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998

Joseph W. Stewart
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S. KATHLEEN ALGAR

Appellant,

v.

YELLOW CAB CO. OF D. C., INC.,
A corporation,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH D. BULMAN

SIDNEY M. GOLDSTEIN

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(i)

QUESTIONS PRESENTED

1. The question is whether the Court below erred in granting summary judgment for the appellee on a finding that there was no genuine issue of fact on appellant's charge that there was a violation of a traffic regulation and public utility commission orders by appellee which proximately caused appellant's injury.

2. The question is whether the Court below erred in granting summary judgment for the appellee on a finding that there was no genuine issue of fact as to the negligence or carelessness of the appellee which proximately caused appellant's injury.

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,263

S. KATHLEEN ALGAR,
Appellant,

v.

YELLOW CAB CO. OF D. C., INC.,
A corporation,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a judgment (J.A. 12) for appellee summarily entered in the United States District Court for the District of Columbia by Judge Sirica on motion filed by the appellee (J.A. 3).

The notice of appeal to this Court was filed on December 3, 1957 (J.A. 13).

The complaint filed by appellant on May 29, 1957 (J. A. 1) seeks damages for personal injuries suffered as a consequence of appellee's negligence in the operation of its taxicab. The action is within the general jurisdiction of the District Court. D. C. Code (1951 ed.) Title 11, Sections 305, 306.

Jurisdiction of this appeal is granted by 28 U. S. C. 1291.

STATEMENT OF THE CASE

On or about January 12, 1957 (inadvertently alleged in the complaint as January 5, 1957), appellant, a female then seventy-one years of age, or someone on her behalf, at about 11:00 P. M., telephoned the appellee to dispatch a taxi to 4344 Forrest Lane, Washington, D. C. for the purpose of transporting her to her residence at 1228 Eye Street, N. W., Washington, D. C. (J. A. 9). Yellow Cab No. 165, owned by the appellee, driven by its agent or employee, Reiges T. O'Neil, responded to the call. There was no sidewalk, as such, adjoining the above mentioned premises (J. A. 8). O'Neil saw appellant and had opportunity to note her age prior to the time appellant sought to board the taxi. As reflected by the affidavit and unsworn statement submitted in support of motion for summary judgment, there is conflict as to whether or not the taxi was parked "close to and parallel with the curb in front of premises 4344 Forrest Lane, N. W." (Affidavit of O'Neil, J. A. 7), or whether "the front of the cab was close in to the curb and . . . the rear of the cab was about a foot out from the curb". (Statement of Appellant, J. A. 9).

Appellant was injured when she fell attempting to board said taxi.

STATUTES INVOLVED

Section 76 of the Traffic and Motor Vehicle Regulations of the District of Columbia (in relevant part).

"Standing or Parking Close to the Curb. No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement, and with the right-hand wheels of the vehicle within twelve inches of the curb or edge of the roadway..."

Order No. 956, Section 3(g) of the Regulations of the Public Utilities Commission of the District of Columbia.

"The operation of taxicabs shall be conducted in accordance with the laws of the District of Columbia, and with due regard for the safety, comfort, and convenience of passengers, and for the safe and careful transportation of property, and the safety of the general public; and all reasonable efforts shall be made to promote such safety at all times and under all conditions."

Order No. 1059, Section 13 of the Regulations of the Public Utilities Commission of the District of Columbia (in relevant part).

"...The driver of any such vehicle [including taxicabs] shall stop as near to the curb as possible in loading or unloading passengers."

Order No. 956, Section 3(1) of the Regulations of the Public Utilities Commission of the District of Columbia.

"Operators of taxicabs in general must not receive or discharge passengers in the street, but whenever possible shall pull up to the sidewalk, or in the absence of a sidewalk, to the extreme right side of the road, and there receive or discharge passengers."

SUMMARY OF ARGUMENT

1. In ruling on a motion for summary judgment by a defendant the Court must construe the facts most favorably to the plaintiff, including all legitimate inferences than can be drawn from such facts.

2. There is a genuine issue as to a material fact, namely, whether the appellee's driver violated the Traffic Regulation and Public Utilities Commission Orders by not stopping close to and parallel with the curb, as the result of which appellant was caused to fall and sustain injury.

3. Aside from a consideration of the pertinent Traffic Regulation and Public Utilities Commission Orders, a genuine issue of a material fact exists as to whether the appellee, in stopping its taxicab with its front against the curb and with the rear about a foot from the curb, in an area where there was no sidewalk, violated its common law duty of exercising the highest degree of care toward a seventy-one year old woman attempting to board the taxicab.

ARGUMENT

I

IN RULING ON A MOTION FOR SUMMARY JUDGMENT BY A DEFENDANT THE COURT MUST CONSTRUE THE FACTS MOST FAVORABLY TO THE PLAINTIFF, INCLUDING ALL LEGITIMATE INFERENCES THAN CAN BE DRAWN FROM SUCH FACTS.

"To support a summary judgment the situation must justify a directed verdict insofar as the facts are concerned." Dewey v. Clark, 86 U. S. App. D. C. 137, 143, 180 F. 2d 766 (1950).

No lengthy citation of authorities is required to support the general proposition that upon motions for summary judgment or a directed verdict all of the facts must be construed in a light most favorable to the party opposing the granting of such motion, including all legitimate inferences that can be drawn therefrom. Higashi v. Shifflett, 90 U. S. App. D. C. 302, 195 F. 2d 784 (1952).

In Dewey v. Clark, supra, the Court clearly and concisely set forth that:

"(1) Factual issues are not to be tried or resolved by summary judgment procedure; only the existence of a genuine and material factual issue is to be determined. Once it is determined that there is such an issue summary judgment may not be granted;

(2) in making this determination doubts (of course the doubts are not fanciful) are to be resolved against the granting of summary judgment;" 86 U. S. App. D. C. at 143.

The appellant states that the front of the taxicab was close to the curb and that the rear of the taxi was about a foot out from the curb. (J. A. 9) Appellee maintains that the taxicab was parked close to and parallel with the curb. (Affidavit of O'Neil J. A. 7) The rule in the Higashi case requires that for present purposes appellant's statement of the facts must be taken as if fully proven and under Dewey, supra, the doubt, if any, should have been resolved against granting the summary judgment.

II

THERE IS A GENUINE ISSUE AS TO A MATERIAL FACT, NAMELY, WHETHER THE APPELLEE'S DRIVER VIOLATED THE TRAFFIC REGULATION AND PUBLIC UTILITIES COMMISSION ORDERS BY NOT STOPPING CLOSE TO AND PARALLEL WITH THE CURB, AS THE RESULT OF WHICH APPELLANT WAS CAUSED TO FALL AND SUSTAIN INJURY.

The facts clearly indicate a violation of the Traffic and Motor Vehicle Regulations of the District of Columbia and of the Orders of the Public Utilities Commission of the District of Columbia. Such regulation is designed to protect the safety of the public generally, and the latter orders are particularly intended and designed to protect the safety of passengers using public transportation.

Section 76 of the Traffic and Motor Vehicle Regulations of the District of Columbia provides that: "No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement, and with the right-hand wheels of the vehicle within twelve inches of the curb or edge of the roadway..." (Emphasis Supplied.) On the facts as they must be taken, the taxi here in question was not parked parallel with the edge of the roadway, nor does it appear that its rear right-hand wheel was within twelve inches of the curb or edge of the roadway. This section was recently construed by the Municipal Court of Appeals for the District of Columbia in Violette v. Campbell, 134 A.2d 330 (1957). There the appellant-defendant maintained that Section 76 was not intended to promote safety but rather the orderly flow of traffic. The Court, unanimously, declared:

"As for the challenge to the applicability of the traffic regulation, we hold in accordance with the general rule (citing annotation appearing at 17 A. L. R. 2d 582) that a regulation of this sort is designed for the safety of the public, and that a violation of it, together with all the other relevant evidence in the case, could form the basis for a finding of negligence." p. 332 (Emphasis Supplied.)

This Section has application to the public generally. How much more compelling become its proscriptions when the facts show it to apply to a public carrier, as in the instant case, which is under the duty of exercising the "highest degree of care" for its passengers.

Pursuant to Congressional authority to regulate the operations and activities of common carriers for the public's benefit, the Public Utilities Commission has promulgated the following orders with regard to taxicabs:

Order No. 956, Section 3(g)

"The operation of taxicabs shall be conducted in accordance with the laws of the District of Columbia, and with due regard for the safety, comfort, and convenience of passengers, and

for the safe and careful transportation of property, and the safety of the general public; and all reasonable efforts shall be made to promote such safety at all times and under all conditions." (Emphasis Supplied.)

Order No. 956, Section 3(1)

"Operators of taxicabs in general must not receive or discharge passengers in the street, but whenever possible shall pull up to the sidewalk, or in the absence of a sidewalk, to the extreme right side of the road and there receive or discharge passengers." (Emphasis Supplied.)

Order No. 1059, Section 13, inter alia

"The driver of any such vehicle [including taxicabs] shall stop as near to the curb as possible in loading or unloading passengers." (Emphasis Supplied.)

Taking the facts in the light most favorable to the appellant, specifically that the taxicab was parked at an angle to the curb and with its right rear wheel a distance of about one foot from the curb, in the dark of night, it is clear that the Traffic Regulation and the foregoing Orders were violated. Appellee's taxicab did not "stop as near to the curb as possible". It did not pull up "to the extreme right side of the road". Furthermore, the operation of appellee's taxicab was not in accordance with "due regard for the safety" of passengers, nor were "all reasonable efforts . . . made to promote such safety at all times and under all conditions".

Violation of the regulations and orders promulgated to protect the safety of the public, and, most particularly, to protect the safety of passengers, is negligence per se. The obvious intendment of these regulations is to prevent the very type of injury which in this case occurred. Peigh, et al. v. Baltimore & Ohio R. R. Co., 92 U. S. App. D. C. 198, 204 F. 2d 391 (1953); Ross v. Hartman, 78 U. S. App. D. C. 217, 139 F. 2d 14 (1943), cert. denied 321 U. S. 790 (1944).

The issue of whether such negligence was the proximate cause of injury in this case is one of fact. The test is whether the violation of any involved regulation or order will foreseeably result in the type of accident as in fact occurs. Certainly when appellant parked its taxicab at an angle to the curb and with its rear about a foot from the curb, it was foreseeable that appellant could miss her step as she attempted to board the taxicab. Logic demands that precisely just such type of accident must have been in the minds of the framers of these orders and regulations, for to protect against just such accidents seems to be the very reason for their being.

III

ASIDE FROM A CONSIDERATION OF THE PERTINENT TRAFFIC REGULATIONS AND PUBLIC UTILITIES COMMISSION ORDERS, A GENUINE ISSUE OF A MATERIAL FACT EXISTS AS TO WHETHER THE APPELLEE, IN STOPPING ITS TAXICAB WITH THE REAR ABOUT A FOOT FROM THE CURB, IN AN AREA WHERE THERE WAS NO SIDEWALK, VIOLATED ITS COMMON LAW DUTY OF EXERCISING THE HIGHEST DEGREE OF CARE TOWARD A SEVENTY-ONE YEAR OLD WOMAN ATTEMPTING TO BOARD THE TAXICAB.

In addition to failing to recognize the existence of a genuine, material factual issue relative to the violation of the Traffic Regulations and Public Utilities Commission Orders, the Court below likewise failed to recognize such factual issue existing with regard to common law negligence.

This error of the Court below involves two separate and distinct phases.

First, the trial court did not recognize that even though the violations of the safety regulations and orders may not have created negligence per se, nevertheless a jury should have been permitted to consider the effect of such regulation and orders on the question of appellee's negligence.

As this Court said in Hecht Co. v. McLaughlin, 93 U.S. App. D. C. 382, 386, 214 F.2d 212 (1954):

"The question of the Company's negligence is to be decided on all relevant evidence, including violation of any safety regulation found to be applicable, and consequently admissible in evidence..." (Emphasis supplied.)

The effect of such language is to give to the jury a norm or standard by which to measure the appellee's duty toward appellant in addition to the "reasonable man" standard, this norm being a regulation and orders promulgated by regulatory bodies empowered by Congress to do just that. Inasmuch as such additional norm or standard thus exists and there is the above-mentioned issue of fact the trial court erred in granting summary judgment.

Secondly, putting completely aside the effect of the violation of safety regulation and orders, we come to common law negligence.

This Court has established that a common carrier "for the safety of its passengers is held to the highest degree of care commensurate with the particular hazards involved". Cole v. C. T. C., 90 U.S. App. D. C. 289, 290, 195 F.2d 568 (1952). Taking at full value the statement of the appellant -- put into the record by the appellee -- that she is seventy-one years of age, it was after 11:00 p.m., the rear of the cab was about a foot from the curb in an area where there was no sidewalk and she fell while attempting to step the distance into the cab -- there can be no doubt that a jury could well find the appellee had not fulfilled its duty of "the highest degree of care commensurate with the particular hazards involved". At the very least such facts, and the natural inferences to be drawn from them, establish a genuine issue of a material fact defeating summary judgment.

As this Court said in Cellini v. Moss, 98 U.S. App. D. C. 114, 116, 232 F.2d 371 (1956):

"Summary judgment is a useful device for disposing of meritless tort claims. But since on a trial of this case plaintiff may be able to elicit from defendant facts which defendant had a duty to observe and plaintiff did not and which may prove plaintiff's case, and since defendant's demeanor on the stand in testifying on these matters may also lead to inferences favorable to plaintiff, we cannot conclude that 'there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law'."

CONCLUSION

The existence of a genuine issue of a material fact having been established the judgment should be reversed and the case remanded for trial on the merits.

Respectfully submitted,
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(i)

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JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

1 [Filed May 29, 1957]

S. KATHLEEN ALGAR
1228 Eye Street, N. W.
Washington, D. C.

Plaintiff,

vs.

YELLOW CAB CO. OF D. C., INC.,
a corporation,
318 Eye Street, N. E.
Washington, D. C.

Defendant.

Civil Action No. 1295-57

COMPLAINT
(Personal Injury)

1. This Court has jurisdiction of the within cause of action, the amount in controversy exceeding the sum of Three Thousand Dollars, (\$3, 000. 00).

2. On, to wit, January 5, 1957, plaintiff, S. Kathleen Algar, was a passenger getting into a taxi cab, owned by or exhibiting the distinctive color scheme and insignia of the Yellow Cab Co. of D. C., Inc., a corporation, at or in front of 4344 Forrest Lane, Washington, D. C. At said time and place, the defendant's taxi cab was pulled up toward the curbing area to receive the plaintiff as a passenger in a negligent and careless manner and in violation of the Public Utility Regulations concerning the operation of taxi cabs, and the use of the streets by taxi cabs, then and there in effect in the District of Columbia. As a result of said negligent and careless operation and in violation of said regulation, the plaintiff was caused to fall and sustained serious injuries.

3. As a result of the fall, as above described, the plaintiff sustained severe, permanent and painful injuries, in and about her head, body, and limbs; nervous shock and mental anguish. As a result of said

injuries, the plaintiff has been caused, and in the future will be caused,
 2 extensive medical, hospital and nursing expenses, and for a
 period of time has been, and will continue to be unable to pursue her
 usual, gainful occupation.

WHEREFORE, plaintiff, S. Kathleen Algar, demands judgment
 against the defendant, Yellow Cab Co. of D. C., Inc., a corporation, in
 the sum of fifty thousand dollars (\$50,000.00), besides interest and
 costs.

/s/ Joseph D. Bulman

/s/ Sidney M. Goldstein

/s/ Samuel Z. Goldman

/s/ Arthur S. Feld

Plaintiff demands trial by jury.

/s/ Sidney M. Goldstein

3 [Filed June 12, 1957]

ANSWER OF DEFENDANT

First Defense.

The complaint fails to state a claim against the defendant Yellow
 Cab Company of D. C., Inc., upon which relief may be granted to the
 plaintiff.

Second Defense.

1. The defendant Yellow Cab Company of D. C., Inc. admits the
 jurisdictional allegations of the complaint.

2. - 3. The defendant Yellow Cab Company of D. C., Inc. admits
 that a taxicab owned by it and exhibiting its distinctive color scheme and
 insignia was stopped at the curb in front of premises 4344 Forrest Lane,
 Washington, D. C., to receive the plaintiff as a passenger, and that the
 plaintiff fell before entering the cab. Each and every other allegation
 in paragraphs 2 and 3 of the complaint, not expressly admitted, is
 denied.

Third Defense.

The defendant Yellow Cab Company of D. C., Inc. denies that its taxicab was pulled up or operated in a negligent or careless manner or
 4 in violation of Public Utility Regulations concerning the operation of taxicabs and the use of the streets by taxicabs; but avers that its taxicab was operated in a careful manner and was properly stopped to receive the plaintiff as a passenger.

Fourth Defense.

The plaintiff's injuries, if any, were proximately caused by her own negligence and/or contributory negligence in failing to carefully and prudently look where she was walking and stepping and in otherwise failing to exercise reasonable care and prudence for her own safety.

Fifth Defense.

The injuries, if any, to the plaintiff were proximately caused by the plaintiff in missing her footing or taking a misstep, and was not proximately caused by any negligence on the part of the defendant, whose taxicab was at a standstill when the plaintiff fell.

/s/ Alfred M. Schwartz
 1420 New York Avenue N. W.
 Washington 5, D. C.
 Attorney for defendant

[Certificate Of Service]

5 [Filed September 25, 1957]

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The defendant, Yellow Cab Company of D. C., Inc., moves the Court for Summary Judgment in its favor on the ground that a consideration of the complaint, answer, affidavit of Reiges T. O'Neill, and signed statement of the plaintiff, which are expressly made a part of this Motion by reference, show that there is no genuine issue as to any of the material facts, and that the defendant Yellow Cab Company of D. C., Inc. is entitled to a judgment in its favor as a matter of law.

Among the grounds in support of the Motion are:

1. The affidavit of the taxicab driver, Reiges T. O'Neill, and the signed statement of plaintiff show that the defendant Yellow Cab Company of D. C., Inc. was not negligent or careless in any respect and that it did not violate any Public Utility regulation, but that the plaintiff's injuries, if any, were proximately caused by her own conduct, and by falling, misstepping and falling without any contact with the taxicab.

2. That the complaint does not state a cause of action upon which judgment against the defendant could be granted.

3. That there does not appear to be any substantial variance between the affidavit of the taxicab driver and the signed statement of the plaintiff as to the manner in which the incident occurred; and there does not exist any genuine issue of fact in relation thereto.

/s/ Alfred M. Schwartz
* * * *

Attorney for defendant

[Certificate Of Service]

7 [Filed September 25, 1957]

**DEFENDANT'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION**

1. The complaint does not state a cause of action;
2. The complaint is intentionally drawn vaguely in order to cover up by general averment the absence of any act or conduct which can be made the basis of a charge of negligence;
3. It will be noted that from a reading of the complaint, it cannot be ascertained if the plaintiff was injured when the taxicab was at a standstill or in motion, and the general allegation of negligence and carelessness discloses nothing;

4. The complaint is silent as to the type or specific regulation of the Public Utilities Commission, a violation of which is attempted to be charged;

5. The complaint alleges that the plaintiff fell, but no other fact is charged in the complaint from which it can be inferred that plaintiff's fall was proximately caused by any act of the defendant;

6. The affidavit and signed statement show clearly that the plaintiff fell by stumbling or missing her footing without any contact with the taxicab and without any negligence on the part of the taxicab company;

8 7. The affidavit of the driver of the defendant's taxicab indicates that he stopped his vehicle parallel and close to the curb. The signed statement of the plaintiff shows that the "front of the cab was close into the curb and I saw that the rear of the cab was about a foot out from the curb";

8. Even if the taxicab were not exactly parallel with the curb and even if the rear of the taxicab was as much as twelve inches from the curb, instead of touching the curb, these facts would not constitute negligence which could be made the basis of any recovery by the plaintiff;

9. In Marshall v. Capital Transit Company, 95 U.S. App. D.C. 1, 216 Fed. 2d. 636, 5 Auto Cases 2d. 389, it was held that the Transit Company was not liable in damages

"for injuries sustained by a passenger who fell in alighting from a bus which had stopped thirty inches from the curb, where there was no unusual hazard in the street but where there was an incline toward the curb for drainage purposes, substantially similar to the slope of street surfaces throughout the District."

The Appellate Court cited several cases to support its opinion, among which was Hoffman v. Philadelphia Transportation Company, 369 Pa. 212, 85 A 2d, 144, 37 Auto Cas. 990, wherein the Court said:

"It remains only to add that even if the bus did stop some distance out from the curb instead of closely adjacent to it, that would not prove negligence."

Also see the case of Kieffer v. Capital Transit Company, 94 U.S. App. D.C. 95, 214 Fed. 2d. 241, wherein the Court said:

9 "Action for damages alleged to have been caused by negligence of defendant in connection with fall of plaintiff in alighting from one of defendant's buses. The United States District Court for the District of Columbia directed a verdict for defendant, and plaintiff appealed. The Court of Appeals held that plaintiff's evidence left cause of fall too uncertain to warrant submission of case to jury. Affirmed."

In Bishop v. Shreveport Rys. Co., ____ La. App. ____, 2 Auto Cases 2d. 376, plaintiff was a fare-paying passenger on defendant's bus and in some manner fell onto the sidewalk as she stepped from the bus. The Court said that:

"Since plaintiff did not fall from the platform, there was no testimony of evidence which would link the accident to any negligence on the part of defendant, its agents or employees. Plaintiff failed to make out her case and the judgment for defendant was affirmed."

In Talbott v. Yellow Cab Company of D. C., Inc. Mun. App. D.C. 121 A.2d. 262, the Court said:

"A carrier is not an insurer and discharges its duty when it has safely deposited its passenger at its destination. * * * In the absence of any proof that the actions of defendant's driver constituted negligence and that such negligence was the proximate cause of his injury, the trial Court had no choice but to grant defendant's motion for directed verdict."

11. The right of the defendant to a Summary Judgment in its favor is clearer in the case of a prospective passenger about to enter the vehicle of a common carrier than that of one about to alight from such a vehicle, in that the view of the person about to alight may be obscured by stepping from either a lighted area into a dark area or in stepping from behind a door that is just opened to permit her egress. In this instance, Miss Algar observed the standing vehicle in its precise

position at the curb. She did not come in contact with the vehicle but simply stumbled or missed her step.

/s/ Alfred M. Schwartz

* * *

Attorney for defendant.

10 [Filed September 25, 1957]

AFFIDAVIT

District of Columbia, ss:

I, Reiges T. O'Neil, residing at 3295 M Street N. W., Washington, D. C., being first duly sworn, depose and say that on Saturday, January 12, 1957 (date erroneously stated in complaint as January 5, 1957), I was driving Yellow Cab No. 165 owned by the defendant Yellow Cab Company of D. C., Inc., and I received over the shortwave radio a report of a telephone call for a taxicab at 4344 Forest Lane N. W., Washington, D. C. I immediately proceeded to the aforementioned address, 4344 Forest Lane N. W., and parked my taxicab close to and parallel with the curb in front of premises 4344 Forest Lane N. W., with the right rear door of my taxicab immediately adjacent to the walk extending from the curb to the front door of premises 4344 Forest Lane N. W. It was shortly after eleven (11:00) o'clock at night and the headlights on my taxicab were on. After parking the cab in front of the house, as above mentioned, I turned on the dome light inside the cab, and then I went to the front door of the house to advise whoever had telephoned for a taxicab that it was waiting. There were two ladies present and, after I informed them that the cab was waiting, the lady (whom I later learned to be Miss S. Kathleen Algar, age 71) stood at the front door talking to the woman who evidently lived at that address and I returned to the cab while Miss Algar continued some further conversation with the aforementioned lady. I opened the right rear door of the taxicab, at which time I then noticed that Miss Algar was then walking from the house toward the door of the cab along the stone

walk extending from the house directly to the curb of the street. There is no sidewalk on Forest Lane in this block. When I opened the right rear door of the cab, the light on the inside of the cab was already on. With the door opened and the light on inside of the cab, I then walked around the rear of the cab to get into the driver's seat of the cab at the left front door. Before I reached the left front door of the cab, I heard Miss Algar scream, and I turned and ran back around the cab and observed Miss Algar lying on her back on the walk, with her feet toward the open cab door. Her left foot was off the edge of the curb but her right leg and complete body were on the stone walk. She said "Oh, my leg" and told me that she fell. I then went back to the house to summon the lady living at the house; and I waited for her to come to the door. She responded from inside the house, opened the door, and came out to the cab with me, stating that she had not seen the incident. The lady who resided at the house ran back to the house, got a blanket and returned with it and she placed the blanket over Miss Algar, and then she went across the street to get a doctor, who came over right away. After examining Miss Algar, the doctor said she should be taken to Emergency Hospital. Miss Algar declined to go there but stated that she wanted to go to the Washington Sanitarium; and the doctor then asked if I would take her to the Sanitarium, which I agreed to do. I helped the doctor put her in the taxicab and I drove her to the Washington Sanitarium in Takoma Park, Maryland, where she was

12 examined and admitted to the hospital.

At the time of this occurrence, the weather was clear and the streets were dry.

/s/ Reiges T. O'Neil

[JURAT]

13

Sunday, 13 January 1957

My name is Miss S. Kathleen Algar, age 71, and I live 1228 Eye St., N. W. Washington, D. C.

A Yellow Cab was called to pick me up about 11 P.M. Saturday 12 January 1957 at 4344 Forest Lane, N. W. where I had been visiting. When the cab driver arrived he came to the door, where I was ready to go. He went to the cab and opened the right rear door for me. He left the door however and started walking around the cab to get in on the left front. The front of the cab was close in to the curb and I saw that the rear of the cab was about a foot out from the curb. I do not recall whether or not the light was on in the cab when the door opened. I had only a handbag in my hands. I reached for the inside door handle of the opened door and took a step toward the floor of the cab. My foot missed the cab entirely and I was not able to catch the door with my hand. I lost balance and fell to the pavement and curb. I felt terrible pain to my right hip and other parts of my body. The driver got Mrs. Kaiser who got a doctor from across the street. The
14 doctor and cab driver put me in the taxi and the cab driver brought me to Washington Sanitarium at my request. Dr. Yeager informs me that the right leg is fractured and that surgery will be necessary.

/s/ S. Kathleen Algar

15

[Filed October 9, 1957]

**MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

Defendant's within Motion is predicated on the theory, necessarily, that defendant and/or his agent, Reiges T. O'Neill, as a matter of law, could not have committed negligence causing plaintiff's injury.

It requires no citation of authority for the proposition that Motions

for Summary Judgment cannot be granted if there should be an unresolved and genuine issue of fact.

Turning to the affidavits submitted and made a part of defendant's within Motion, the genuine issues of fact remaining become obvious. The affidavit of O'Neill states that he "parked my taxicab close to and parallel with the curb in front of premises 4344 Forest Lane, N. W., with the right rear door of my taxicab immediately adjacent to the walk extending from the curb to the front door of premises 4344 Forest Lane, N. W." (p. 1, aff.) Further along, O'Neill states: "There is no sidewalk on Forest Lane in this block" but further on O'Neill makes reference to a stone walk. (p. 2, aff.) It appears that O'Neill opened the rear door and then walked around cab toward left front door, not helping plaintiff to board his vehicle.

Turning to the statement of plaintiff, relied upon by the defendant, we have this statement: "... I saw that the rear of the cab was about a foot out from the curb." (p. 1, aff.)

Paragraph No. 3 of defendant's Motion recites: "That there does not appear to be any substantial variance between the affidavit of the taxicab driver and the signed statement of the plaintiff as to the manner in which the accident occurred; and there does not exist any genuine issue of fact in relation thereto." Plaintiff submits that there is a
 16 palpable conflict upon a material issue, the distance of the door of defendant's cab from the sidewalk, curb, or stone walk, as the case may be.

Insofar as defendant's statement in his Motion that he was not negligent or careless in any respect and that he did not violate any Public Utility regulation, plaintiff points to the following regulations:

"Section 3G. ~~25(g)~~ (of the Digest of Regulations Governing Taxicabs, etc., promulgated by the Public Utilities Commission of the District of Columbia). The operation of taxicabs shall be conducted in accordance with the laws of the District of Columbia, and with due regard for the safety, comfort, and convenience of passengers, and for the safe and careful transportation of property, and the safety of

the general public; and all reasonable efforts shall be made to promote such safety at all times and under all conditions."

Furthermore, the same Digest as above quoted provides:

"The driver (of a taxicab) . . . shall stop as near to the curb as possible in loading or unloading passengers."

The Traffic and Motor Vehicle Regulations of the District of Columbia provides:

"Sec. 76. Standing or Parking Close to the Curb. No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement, and with the right hand wheels of the vehicle within twelve inches of the curb or edge of the roadway. . . ."

Plaintiff submits that a grievous question of material fact is unresolved in that plaintiff contends, and defendant denies, that defendant was in violation of the above regulations.

In the recent case of Violette v. Campbell, Municipal Court of Appeals, No. 1996, July 25, 1957, the Court construed the above-quoted section 76. The Court held that a violation of the regulation, which prohibits standing or parking more than twelve inches from the curb, were to be negligence and, if the proximate cause of plaintiff's injury, would entitle her to recover. Additionally, the Court held that a regulation of this type had as much purpose to safeguard the

17 public as to permit free flow of traffic.

Contrary to the assertions in defendant's Motion, therefore, it appears that the defendant could have violated the Public Utility regulations cited, could have violated Section 76 of the Motor Vehicle Regulations, and that, generally, the defendant could have been negligent in failing to provide for the safety of his passenger under all the circumstances.

For the foregoing reasons, and for such additional reasons as may be adduced at argument of the within Motion, plaintiff respectfully submits that the defendant's Motion for Summary Judgment should be

denied.

Respectfully submitted,

/s/ Joseph D. Bulman

/s/ Sidney M. Goldstein

/s/ Arthur S. Feld

/s/ Sidney A. Cohen

Attorneys for Plaintiff

* * *

[Certificate of Mailing]

18 [Filed November 6, 1957]

SUMMARY JUDGMENT

This action having come on for hearing on the Motion of the defendant Yellow Cab Company of D. C. Inc., a corporation, for summary judgment in its favor against the plaintiff S. Kathleen Algar, and upon consideration of said Motion, the supporting Affidavit of Reges T. O'Neill and the signed statement embodying the plaintiff's version of the occurrence, and of the Memoranda of counsel for the respective parties; and it appearing therefrom that there exists no genuine issue of fact, it is by the Court this 6th day of November, 1957,

ORDERED AND ADJUDGED, as follows:

1. That plaintiff's alleged injuries were not proximately caused by any negligence or carelessness on the part of the defendant or by the violation of any Municipal regulation or of any Public Utility regulation concerning the operation of taxicabs or their use of the streets;

AMS
SMG 2. -- That the plaintiff's alleged injuries were proximately and solely caused by the act of the plaintiff in taking a misstep;

2. That the defendant's Motion for Summary Judgment in its favor should be granted.

19 And it is the further

JUDGMENT OF THE COURT

1. That the Motion of the defendant Yellow Cab Company of D. C., Inc. for summary judgment in its favor be and the same is hereby granted;
2. That the plaintiff S. Kathleen Algar recover nothing by this action against the defendant Yellow Cab Company of D. C., Inc.; and
3. That the defendant Yellow Cab Company of D. C., Inc. have judgment in its favor and recover from the plaintiff its costs to be taxed by the clerk.

/s/ John J. Sirica
Judge

SEEN:

Sidney M. Goldstein
Attorney for plaintiff

Alfred M. Schwartz
Attorney for defendant

20 [Filed December 3, 1957]

NOTICE OF APPEAL

Notice is hereby given this 3rd. day of December, 1957, that plaintiff, S. Kathleen Algar, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 6th day of November, 1957 in favor of defendant, Yellow Cab Company of D. C., Inc. against said plaintiff, S. Kathleen Algar.

/s/ Joseph D. Bulman

/s/ Sidney A. Cohen

/s/ Arthur S. Feld

Attorneys for Plaintiff
800 Woodward Bldg.

Attorneys for Plaintiff:
* * *

Attorney for Defendant:
* * *

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED FEB 10 1958

No. 14, 263

Foyel W. Stewart
CLERK

S. KATHLEEN ALGAR,

Appellant

VS.

YELLOW CAB COMPANY OF D.C., INC.
a corporation,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALFRED M. SCHWARTZ

1420 New York Avenue, N. W.
Washington 5, D. C.

Attorney for Appellee

(i)

QUESTION PRESENTED

Was Motion of Appellee (defendant below) for Summary Judgment properly granted, where the facts most favorable to Appellant (plaintiff below) showed that Appellee's taxicab was standing still, adjacent to the curb in front of a house to which it had been driven, in response to a telephone call for a taxicab, and where Appellant, observing the taxicab standing with its front close in to the curb and the rear of the cab about a foot out from the curb, approached the cab in readiness to enter it at the right rear, open door, missed her footing or took a misstep and fell to the pavement and curb without contact with any part of the taxicab, and broke her leg?

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UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 14, 263

S. KATHLEEN ALGAR,

Appellant

vs.

YELLOW CAB COMPANY OF D. C., INC.

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

In her complaint, Appellant alleges that on January 5,¹ 1957 she was a passenger getting into a taxicab of the Appellee in front of 4344 Forest Lane, Washington, D. C., and that she was caused to fall and sustained serious injuries at that time because Appellee's "taxicab was pulled up toward the curbing area to receive the plaintiff as a passenger in a negligent and careless manner and in violation of the Public Utility regulation concerning the operation of taxicabs, and the use of the streets by taxicabs * * * ." (J. A. 1).

Appellee's answer averred that its taxicab was stopped at the curb in front of premises 4344 Forest Lane, Washington, D. C., to receive the Appellant as a passenger, and that the Appellant fell before entering the taxicab. Each of the remaining allegations of the complaint was denied.

Appellee also asserted in its answer that the Appellant's injuries were proximately caused by her own negligence and/or contributory negligence, because of her failure to carefully and prudently look where she was walking and stepping, and in missing her footing, or taking a misstep. Appellee also averred that appellant's injuries were not proximately caused by any negligence on the part of the Appellee, whose taxicab was at a standstill when the Appellant fell. (J. A. 2-3).

A Motion by Appellee for Summary Judgment, supported by the affidavit of its taxicab driver and the signed statement of the Appellant, was granted by the Court and, from the granting of this Motion, Appellant (plaintiff below) has prosecuted this appeal.

Appellant's signed statement reads as follows (J. A. 9):

"My name is Miss S. Kathleen Algar, age 71, and I live at 1228 Eye Street, N. W., Washington, D. C.

A Yellow Cab was called to pick me up about 11 P. M. Saturday, 12 January 1957, at 4344 Forest Lane N. W., where I had been visiting. When the cab driver arrived he came to the door, where I was ready to go. He went to the cab and opened the right rear door for me. He left the door however and started walking around the cab to get in on the left front. The front of the cab was close in to the curb and I saw that the rear of the cab was about a foot out from the curb. I do not recall whether or not the light was on in the cab when the door opened. I had only a handbag in my hands. I reached for the inside door handle of the opened door and took a step toward the floor of the cab. My foot missed the cab entirely and I was not able to catch the door with my hand. I lost balance and fell to the pavement and curb. I felt terrible pain to my right hip and other parts of my body. The driver got Mrs. Kaiser, who got a doctor from across the street. The doctor and cab driver put me

in the taxi and the cab driver brought me to Washington Sanitarium at my request. Dr. Yeager informs me that the right leg is fractured and that surgery will be necessary."

Reiges T. O'Neil, the driver of the taxicab, in his affidavit (J. A. 7-8) accompanying the Motion for Summary Judgment, stated as follows his knowledge and observation of the occurrence:

"I received over the shortwave radio a report of a telephone call for a taxicab at 4344 Forest Lane N. W., Washington, D. C. I immediately proceeded to the aforementioned address, 4344 Forest Lane N. W., and parked my taxicab close to and parallel with the curb in front of premises 4344 Forest Lane N. W., with the right rear door of my taxicab immediately adjacent to the walk extending from the curb to the front door of premises 4344 Forest Lane N. W. It was shortly after eleven (11:00) o'clock at night and the headlights on my taxicab were on. After parking the cab in front of the house, as above mentioned, I turned on the dome light inside the cab, and then I went to the front door of the house to advise whoever had telephoned for a taxicab that it was waiting. There were two ladies present and, after I informed them that the cab was waiting, the lady (whom I later learned to be Miss S. Kathleen Algar, age 71) stood at the front door talking to the woman who evidently lived at that address, and I returned to the cab while Miss Algar continued some further conversation with the aforementioned lady. I opened the right rear door of the taxicab, at which time I then noticed that Miss Algar was then walking from the house toward the door of the cab along the stone walk extending from the house directly to the curb of the street. There is no sidewalk on Forest Lane in this block. When I opened the right rear door of the cab, the light on the inside of the cab was already on. With the door opened and the light on inside of the cab, I then walked around the rear of the cab to get into the driver's seat of the cab at the left front door. Before I reached the left front door of the cab, I heard Miss Algar scream, and I turned and ran back around the cab and observed Miss Algar lying on her back on the walk, with her feet toward the open cab door. Her left foot was off the edge of the curb but her right leg and complete body were on the stone walk. She said "Oh, my leg" and told me that she fell. * * * * At the time of this occurrence, the weather was clear and the streets were dry."

SUMMARY OF ARGUMENT

- I. There was no genuine issue as to any material fact.
- II. The Appellant's Injuries were proximately caused, as a matter of law, by her sole and/or contributory negligence.

ARGUMENT

I

There Was No Genuine Issue As To Any Material Fact.

The affidavit of the appellee's driver, Reiges T. O'Neil, and statement of appellant, present no issue as to any material fact. The driver of the taxicab says that he parked his cab close to and parallel with the curb in front of 4344 Forest Lane, N. W., with the right rear door immediately adjacent to the walk, which extended from the curb to the front door of the premises, turned on the dome light inside the cab and went to the front door of the house to inform his prospective fare that the cab was waiting. He then returned to the cab, opened the right rear door, and noticed the appellant lingering briefly in further conversation with another lady and then walking along the stone walk toward the open door of the cab. He did not observe her fall but heard her scream.

On this subject, the appellant states that she did not notice whether or not the light inside the cab was on when the right rear door was opened for her by the driver of the cab; that she did notice that the front of the cab was close in to the curb and the rear of the cab was about a foot out from the curb. She then related that she reached for the inside door handle of the open door and took a step toward the floor of the cab but missed the cab entirely and she was not able to catch the door with her hand, lost her balance and fell to the pavement and curb.

From the above, it is to be noted that the only difference in their respective versions is in the position of the cab, in that the driver says that his cab was parked close to and parallel with the curb and appellant states that the front end of the cab was close in to the curb and the rear of the cab was about a foot out from the curb. Appellant's attorneys admit this to be the only "conflict" between the two statements (Appellant's Brief, p. 2). This difference in their respective statements cannot be deemed a material issue of fact.

Obviously, if the rear of the cab was 12 inches from the curb and the front of the cab was close in to the curb, the opening through the right rear door, which would be just back of the center door post of the cab, would be closer into the curb than 12 inches. The slight and unimportant angle at which the cab was standing adjacent to the curb is insignificant, did not create a material issue of fact and was not a proximate cause for appellant's fall. By appellant's own admission, that the rear of the cab was about a foot out from the curb and the front of the cab was close in to the curb, there was no violation of Section 76 of the Traffic and Motor Vehicle Regulations² in the distance of the cab from the curb, or any material issue of fact in relation thereto.

In Peigh v. Baltimore and Ohio R. R. Co., 92 U. S. App. 198, 204 F.2d 391, this Court said, at page 200:

"Violation of a regulation does not, ipso facto, give rise to civil liability unless the regulation is one designed to prevent the sort of harm to the individual relying on it which has in fact occurred. Restatement of Torts, sec. 286(a); Ross v. Hartman, *supra*; Exner v. Sherman Power Const. Co., 2 Cir.

² ARTICLE XIII. Stopping, Standing or Parking.

Sec. 76 - STANDING OR PARKING CLOSE TO CURB.

"No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway headed in the direction of lawful traffic movement and with the right-hand wheels of the vehicle within twelve inches of the curb or edge of the roadway, except that on a one-way street the left hand wheels may be adjacent and within twelve inches of the left-hand curb, and except that a passenger vehicle may stop parallel and as near as practicable to parked vehicles only long enough to actually take on or let off passengers, and a commercial vehicle may stop parallel and as near as practicable to parked vehicles while actually engaged in loading or unloading materials, if no curb space is available within a reasonable distance; provided, that such vehicle while so parked will not unreasonably impede or interfere with orderly two-way traffic, and that on one-way streets, one lane be kept open for moving traffic."

1931, 54 F.2d 510, 80 A. L. R. 686; cf. *Union Pacific Ry. Co. v. McDonald*, 1894, 152 U.S. 262, 283, 14 S.Ct. 619, 38 L. Ed. 434. Further, the doctrine of negligence per se is one which must be applied cautiously, with an eye to essential fairness. If its use in a particular case tends to produce liability based not on real fault, or any real departure from standards of prudent conduct, but only on a technicality, the courts are justifiably reluctant to apply it. In general, the guiding principle is whether its application is necessary to effectuate the legislative purpose. In our view, the present case does not fall within that category. We are clear that the regulation here involved was promulgated in the interests of expediting traffic and encouraging commerce in the city. The safety of passing motorists was not its goal, at least in any sense which would make applicable the doctrine of negligence per se. * * *

The case of Violette v. Campbell (Mun. App. DC. 1957), 134 A. 2d 330, relied upon by appellant, is not in point. In that case, the passenger was partially in the cab which was stopped at an angle with the rear door about four steps from the curb (from which it could be inferred that it was ten or twelve feet from the curb), and the taxicab was struck from the rear by another vehicle, injuring the passenger. In that case, there was a clear violation of the regulation by the taxicab in blocking or obstructing the movement of traffic in the street, which was followed by a collision with another vehicle. This was the very thing this regulation was designed to guard against, namely, the obstructions which may block the street or roadway in such a manner as to prevent the easy passing by other vehicles and resulting delays and hazards in the movement of other vehicular traffic on the streets and roadways of the District of Columbia.

There remains then the appellant's claim that a taxicab (the average length of which is 16 to 18 feet) is unlawfully standing or parked when its front and rear ends are not precisely and mathematically equally distant from the curb. If the taxicab were 17 feet long from bumper to bumper, and there existed a difference of not more than twelve inches in the spacing of front and rear ends of the cab from the curb, the

angle in which the cab stood was inconsequential and could not have proximately caused the accident and did not create any material issue of fact. Only substantial compliance, not mathematical preciseness, is required. So trifling a departure from a mathematically precise parallel line should not be made a basis for liability. The answer is in the legal maxim de minimis non curat lex.

It was never intended that drivers of automobiles in stopping or parking should carry a slide rule to measure with precision the exact parallel line from the curb along which their vehicles should stand or park; nor should civil liability extend to a driver, or make him negligent per se, if, without any departure from standards of prudent conduct, he fails to park his vehicle in a precisely exact parallel line.

Section 76 of the Traffic and Motor Vehicle Regulations, upon which appellant pitches her case, is not applicable, because it was not designed to prevent an injury from a fall or misstep. It was intended to promote the orderly flow of traffic, and such an intention is clear when all of Section 76 is read rather than confining the reading of the regulation to the portion quoted at Page 3 of appellant's brief.

Appellant's fall was not proximately caused by the slight and insignificant angle of the cab, the location of which at the curb she clearly observed. Her own explanation is the only evidence of the cause for her fall, namely, that she took a misstep, lost her balance and fell.

The obligation was upon the appellant to establish not only some wrongful act by the appellee, but also that the wrongful act was the cause of her injury. Laidlaw v. Sage, 158 N. Y. 73, 52 N. E. 679. As the Court said in Atchison T. & S. F. Ry. Co. v. Toops, 281 U. S. 351, 354-5, 74 L. Ed. 896, 50 S. Ct. 281 (an action under the Federal Employers' Liability Act):

"But proof of negligence alone does not entitle the plaintiff to recover * * *. The negligence complained of must be the cause of the injury. The jury may not be permitted to speculate as to its cause and the case must be withdrawn from its consideration unless there is evidence from which the inference may reasonably be drawn that the injury suffered was caused by the negligent act * * *."

The appellant, at page 3 of her brief, also refers to three orders of the Public Utilities Commission, but significantly her brief does not point out in what respects any one of these three orders was violated by the appellee. The record reveals no violation by the appellee of any of these orders.

Where the claim is made that a vehicle was not stopped in proper relation to the curb, the right of a defendant to summary judgment in its favor is clearer in a case of a prospective passenger about to enter the vehicle of a common carrier than that of one about to alight from such vehicle. In the latter case, the passenger's view is often obscured because he steps from behind a door that is just opened, whereas in this case appellant had full opportunity to observe the position of the cab and did so.

This Court has consistently sustained directed verdicts in the lower courts based upon falls of passengers as they alighted from vehicles of common carriers. Marshall v. Capital Transit Co., 95 U.S.App. D.C. 1, 216 F.2d 636; Keefer v. Capital Transit Co., 94 U.S. App. D.C. 95, 214 F.2d 241; Swank v. Capital Transit Co., 95 U.S. App. D.C. 127, 220 F.2d 807; Talbot v. Yellow Cab Company of D.C., Inc., Mun. App. D.C. 121 A.2d 262.

This Court cited in the Marshall case, as supporting its opinion, Hoffman v. Philadelphia Transportation Co., 369 Pa. 212, 85 A. 2d, 144, 37 Auto Cas. 990, wherein the Court said:

"It remains only to add that even if the bus did stop some distance out from the curb instead of closely adjacent to it, that would not prove negligence."

In Bishop v. Shreveport Rys. Co., La. App. 63 So.2d. 181, 2 Auto Cases 2d. 376, plaintiff was a fare-paying passenger on defendant's bus and in some manner fell onto the sidewalk as she stepped from the bus. The Court said that since there was no testimony or evidence which would link the accident to any negligence on the part of defendant, plaintiff failed to make out her case and judgment for defendant was affirmed. Also see Greco v. Public Service Interstate Transportation Co., 135 N.J.L. 280, 51 A.2d. 1 and Wiggins v. Monroe (La. App.) 25 So.2d. 921, 9 ALR 2d. 959.

II

The Appellant's Injuries Were Proximately Caused, As A Matter of Law, By Her Sole And/Or Contributory Negligence.

The lower court granted appellee's motion for summary judgment because it clearly appeared that there was no genuine issue of any material fact, and from the admitted facts the appellant's injuries were not proximately caused by any negligence or carelessness on the part of the appellee or by the violation by the appellee of any municipal or public utility regulations. The Court therefore did not deem it necessary to also find that appellant's injuries were solely caused by her own act in taking a misstep.

The record, however, clearly shows that the sole cause for appellant's injuries was her own negligence and, such being the case, her right to recover is barred, and this bar is an additional reason for the action of the lower court being affirmed.

CONCLUSION

It is respectfully submitted that the lower court was correct in concluding that there existed no genuine issue of any material fact and that on the admitted facts appellant was not entitled to recover.

Accordingly, the judgment of the lower court should be affirmed.

Respectfully submitted,

ALFRED M. SCHWARTZ

1420 New York Avenue N. W.
Washington 5, D. C.

Attorney for Appellee

